

Information and Resources for Service-Disabled Veteran-Owned Small Business Concerns Appeals

A Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC) must be: (1) *owned* at least 51% by one or more service-disabled veterans; (2) *controlled* by one or more service-disabled veterans; and (3) defined as *small* by being within the size standard corresponding to the NAICS code assigned to the contract. Below you will find a list of regulations governing the SDVO SBC program and protest and appeals processes, internet resources, and significant Office of Hearings and Appeals (OHA) SDVO SBC decisions.

Regulations

Current versions of the following regulations are available at ecfr.gpoaccess.gov.

SBA's regulations on the SDVO SBC program are found in 13 C.F.R. §§ 125.8 to 125.29. The eligibility requirements are explained at 13 C.F.R. § 125.8 to 125.13 and the protest procedures are explained at 13 C.F.R. § 125.24 to 125.28.

SBA OHA regulations are found in 13 C.F.R. Part 134. The following subparts and sections apply to SDVO SBC appeals:

Subpart A - §§ 134.101 – 134.103

Subpart B - §§ 134.201 – 134.229

Subpart E - §§ 134.501 – 134.515

Additional regulations regarding the SDVO SBC procurement program can be found in FAR Subpart 19.14.

OHA SDVO SBC Decisions

Copies of the following decisions are available at www.sba.gov/oha.

Service-Disabled Veteran Status

With respect to status determinations on whether the owner is a service-disabled veteran (SDV), SBA will not go beyond documentation from the U.S. Department of Veteran's Affairs

(VA) or U.S. Department of Defense (DOD) in determining SDV status. However, if the documentation submitted is questionable, SBA may attempt to verify status with VA or DOD, or if the individual's status cannot be verified, may conclude that the individual has not established their eligibility as an SDV. *IITS-Nabholz, LLC*, SBA No. VET-114 (2007).

If the individual claiming SDV status does not receive from VA or DOD the determination that he or she is an SDV prior to the date as of which eligibility is determined, the firm is not an eligible SDVO SBC. *Nelco Diversified, Inc.*, SBA No. VET-140 (2008).

Ownership

The SDV must: (1) Immediately and fully own the interest without having to wait for future events; (2) Must be able to convey or transfer the interest whenever and to whomever he/she chooses; and (3) Upon departure, resignation, retirement or death still own the interest and be able to do with it as he/she chooses.

Wexford Group International, Inc. SBA No. SDV-105 (2006).

Ownership must be direct. A concern owned by corporations owned by SDVs is not an eligible SDVO SBC. *IITS-Nabholz, LLC*, SBA No. VET-114 (2007).

The SDV must unconditionally own the stock; restrictions on what he/she may do with it are impermissible. *Veterans Construction Services, Inc.*, SBA No. VET-167 (2009).

Control

SBA must go beyond the formalities of business ownership and titles and examine how a concern is actually run on a daily basis. *Eason Enterprises OKC LLC*, SBA No. SDV-102 (2005).

A business which requires intense supervision and on-site interaction with customers, such as construction, cannot be under the day-to-day control of an SDV whose office is 2,000 miles from the job site, especially when the SDV has little experience. *First Capital Interiors, Inc.*, SBA No. VET-112 (2007).

An applicant firm must provide evidence establishing the SDV's ability and experience to run the applicant concern, such as a resume. *SDV Solutions, Inc.*, SBA No. VET-116 (2007).

An SDV with extensive experience in a field that does not require intense supervision does control the SDVO SBC when the firm is located 100 miles from the work site. *E2Si-SaLUT Joint Venture*, SBA No. VET-126 (2008).

A firm which fails to elect the SDV to the board of directors is ineligible. *Cedar Electric, Inc./Pride Enterprises, Inc., JV*, SBA No. VET-129 (2008).

A concern whose organizing documents grant non-SDVs the power to manage the concern, and whose headquarters and place of business are 2,000 miles from the SDV's residence, is not controlled by the SDV. *NuGate Group*, SBA No. VET-132 (2008).

When the SDV owns 60% of the concern, and the organizing documents require 67% of

membership interest to agree on appointment of officers, the SDV does not control the concern. *Firewatch Contracting of Florida, LLC*, SBA No. VET-137 (2008).

Where a non-SDV previously owned 100% of a concern, and now owns 49%, holds a license important for the concern's operations, is the president of the concern, and the concern's by-laws do not provide for a separate chief executive officer, which is the SDV's title, the non-SDV, not the SDV, controls the concern. *Nelco Diversified, Inc.*, SBA No. VET-140 (2008).

The SDV does not control the business if all officers have equal power and all actions require the unanimous consent of shareholders. *Piedmont Contracting & Design, Inc.* SBA No. VET-169 (2009).

The business documents (articles, by-laws, operating agreements, partnership agreements, etc.) must be unambiguous in giving control to the SDV. *VetIndy, LLC*, SBA No. VET-175 (2010).

The SDV must actually control the firm and run the day-to-day management. If a non-SDV general partner performs day-to-day management and the SDV has little experience in the field, the SDV does not control the business. *Corners Construction*, SBA No. VET-190 (2010).

The SDV does not control the company if the business has supermajority requirements which the SDV's interest is insufficient to meet. *Valor Contracting, LLC*, SBA No. VET-194 (2010).

Procedural Errors

A firm which fails to respond to an SDVO SBC protest may not cure its failure on appeal. *Meadowgate Technologies, LLC*, SBA No. VET-115 (2007).